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FEB 13 1928
CHARLES ELMORE CROPLEY
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No. ~~740~~ 60

Supreme Court of the United States

October Term 1927

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W. A. FROST, DOING BUSINESS UNDER THE NAME OF MITCHELL GIN COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, FRED CAPSHAW, FRANK CARTER, ET AL., ETC., ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

MOTION TO ADVANCE

EDWIN DABNEY,
Attorney General of the State of Oklahoma,

E. S. RATLIFF,
Attorney for the Corporation Commission of the State of Oklahoma,

R. M. RAINEY,
STREETER B. FLYNN,
Attorneys for Appellant.

Francis & Holden, Brief Printers, 522-5 West Second St., Oklahoma City. Maple 6245

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Come now appellees, appearing by Edwin Dabney, Attorney General of the State of Oklahoma, and E. S. Ratliff, attorney for the Corporation Commission of the State of Oklahoma, and appellant appearing by Robert M. Rainey and Streeter B. Flynn, and respectfully move this Honorable Court to advance this cause and set the same for hearing at a date as early as may be convenient for the Court.

In the support of this motion the parties respectfully

state that this is the second appeal in this case to this Court. That the first appeal filed May 14, 1926, No. 375 October term 1926, was advanced for hearing by this Honorable Court, and the decree of the three judge court, convened pursuant to Section 366, Jurisdiction Code, was affirmed on authority of *Chicago, G. W. Ry. Co.* v. *Kendall et al.*, 266 U. S. 94.

That thereafter final hearing was had, and on December 13, 1927, the Court, composed of three judges, entered its decree dismissing appellant's bill.

The case involves the question of the constitutionality of the statutes of the State of Oklahoma dealing with the licensing of cotton gins. That under said statutes certificates of convenience and necessity must be secured before a person or corporation can erect or operate a gin, and said license or permit can be secured only after a hearing before the Corporation Commission.

The Legislature of the State of Oklahoma, in 1925, amended the former statutes by inserting the following provision:

> "That on the presentation of a petition for the establishment of a gin to be run co-operatively, signed by one hundred citizens and tax payers of the community where the gin is to be located, the corporation commission shall issue a license for said gin."

Appellant is and was the holder of a valid license to

operate a gin in the City of Durant, Oklahoma. Appellee, Durant Co-operative Gin Company, applied to the commission for a permit or license and attached thereto a petition signed by one hundred citizens and tax payers. To restrain the issuance of said license by the Corporation Commission, appellant filed his bill in the United States District Court for the Western District of Oklahoma, contending that the proviso exempting the Durant Co-operative Gin Company from making a showing of the necessity for the establishment of another gin in the city of Durant by the filing of a petition signed by one hundred citizens and tax payers of the community, is in violation of and contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and that the granting of a license or permit to the Durant Co-operative Gin Company pursuant to said proviso, would deprive appellant of his constitutional guarantees.

The question involved is of great importance to the State of Oklahoma, since the business of raising and ginning cotton is the principal agricultural industry of the State, and that until the constitutionality of the proviso in question is determined, great confusion will continue to exist in the cotton ginning business in the State.

For the reasons herein mentioned parties respectfully move this Honorable Court for the advancement of this

cause and the setting of the same at a date as early as may be convenient to the court, and respondents furthermore respectfully state that the matter is of such importance, that if the business of the court will permit, they would ask that the advancement be to some date prior to the adjournment of the present term.

Respectfully submitted,

EDWIN DABNEY,
Attorney General of the State of Oklahoma,

E. S. RATLIFF,
Attorney for the Corporation Commission of the State of Oklahoma,

R. M. RAINEY,
STREETER B. FLYNN,
Attorneys for Appellant.